

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GEORGE WHITFIELD and ANDRE COLLINS,

Plaintiffs-Appellants,

v

MEL FARR FORD, INC.,

Defendant-Appellee.

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UNPUBLISHED

April 15, 2003

No. 237559

Oakland Circuit Court

LC No. 2000-025286-NZ

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff George Whitfield<sup>1</sup> appeals as of right the trial court's order granting defendant's motion for reconsideration and motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, who is African American, worked for defendant as the service manager at defendant's location on 10 Mile Road. Plaintiff was appointed to the position of service manager and received positive performance reviews. However, subsequently, plaintiff was informed that he would no longer hold the position of service manager. Plaintiff was replaced by a white employee who had less managerial experience. Plaintiff declined a sales position at another of defendant's dealerships, and did not return to his employment with defendant.

Plaintiff filed suit alleging racial discrimination in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.* Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the actions it took that affected plaintiff's employment were taken in an effort to improve the performance of the dealerships, and were not racially motivated. Defendant contended that plaintiff was removed from his position because his performance was inadequate. Defendant asserted that a comment by its manager that it intended to "change the culture" of the dealership was not, as plaintiff contended, an expression of an intention to reduce the number of African American employees, but rather, was an expression of a Ford policy to make dealerships more customer friendly. Initially, the trial court denied defendant's motion for summary disposition, finding that a question of fact existed as to whether plaintiff was qualified

<sup>1</sup> Andre Collins is designated as an appellant because he was a party below and his claim was dismissed by the trial court's order. Collins is not a participant in this appeal. "Plaintiff" refers to George Whitfield only.

for the position he held, and that it could not rule out the possibility that race was a motivating factor in defendant's decision to remove plaintiff from his position. In so concluding, the trial court relied on affidavits submitted by plaintiff and from two of defendant's employees stating that defendant's owner made race-based comments, including that he wanted more white customers.

Defendant moved for reconsideration, noting that the affidavits relied on by the trial court were submitted by persons who were not employees at the dealership where plaintiff worked, and contending that to conclude from a statement that a dealership wanted white customers and that plaintiff was removed from his position due to his race would be speculation. In addition, defendant argued that one of the affidavits was not notarized, and therefore, could not be considered as evidence. The trial court granted defendant's motion for reconsideration and granted summary disposition in favor of defendant. The trial court concluded that while the evidence established that a question of fact existed as to whether plaintiff was qualified for his position, it did not create an issue of fact as to whether race was the motivation for defendant's actions. The trial court found that the affidavits on which it relied to deny defendant's motion in its previous order did not create a question of fact regarding defendant's motivation. The trial court acknowledged that the affidavit that was not notarized could not be considered in evidence. The trial court denied plaintiff's subsequent motion for reconsideration.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). We review a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

A plaintiff may establish a prima facie case of racial discrimination by demonstrating that he or she suffered an adverse employment action under circumstances giving rise to an inference of prohibited discrimination. If the plaintiff establishes a prima facie case, the employer has the burden of coming forward with a legitimate, nondiscriminatory reason for the adverse employment action. If the employer does so, the plaintiff has the burden of proving that the stated reason was merely a pretext for discrimination. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 359; 597 NW2d 250 (1999).

Plaintiff argues that the trial court abused its discretion by granting defendant's motion for reconsideration and erred by granting defendant's motion for summary disposition. Plaintiff contends that the evidence established a prima facie case that he was qualified for the service manager position, and that race was a motivating factor in defendant's decision to remove him from that position. Furthermore, plaintiff asserts that, in granting the motion for summary disposition, the trial court erred in stating that the evidence was insufficient to raise an issue of fact as to whether racial discrimination was the "true motivation" for defendant's actions. Plaintiff argues that to prove a prima facie case of racial discrimination, a claimant must show only that racial discrimination was "a" motivating factor.

We affirm the trial court's order granting defendant's motion for reconsideration and granting defendant's motion for summary disposition. The trial court granted reconsideration on the ground that it erred by relying on affidavits, one of which was not notarized, and thus, was not admissible as an affidavit, see *June v School Dist No. 11*, 283 Mich 533, 537; 278 NW 676 (1938), from persons who were not employed at the same dealership as was plaintiff. The trial

court did not abuse its discretion by granting defendant's motion for reconsideration. MCR 2.119(F)(3); *Churchman*, *supra*. The trial court stated that given the contradictory evidence presented by the parties on that issue, it could not rule out a finding that plaintiff was qualified. However, the trial court found that the evidence did not create an issue of fact as to whether racial discrimination was defendant's motivation in removing plaintiff from his position.<sup>2</sup> The evidence showed that a number of employees, some of whom were African American, were transferred among defendant's various dealerships. Plaintiff declined a sales position at another dealership. Defendant presented evidence that the transfers were made for economic reasons. Plaintiff presented affidavits, including those on which the trial court correctly found that it erroneously relied, in support of his assertion that these transfers were done to eliminate African American employees from certain dealerships. However, opinion evidence and unsworn averments do not establish the existence of an issue of fact. *DeSot v Auto Club Ins Ass'n*, 174 Mich App 251, 253; 435 NW2d 442 (1988). The trial court correctly decided the issue as one of law, *Wilcoxon*, *supra*, and properly granted defendant's motion for summary disposition on reconsideration.

Affirmed.

/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood

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<sup>2</sup> Plaintiff's assertion that the trial court applied an incorrect standard of review to his claim is without merit. The trial court's citation to authority in its original opinion and order denying defendant's motion for summary disposition indicates that the trial court was aware of the correct standard to be applied in this case.